

NO TREASON IN CIVIL WAR.



GERRIT SMITH AT COOPER INSTITUTE,

June 8th, 1865.





Class E 690

Book .507



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SPEECH

OF

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AT

COOPER INSTITUTE, NEW-YORK, JUNE 8, 1865.



NEW-YORK:

FOR SALE BY

THE AMERICAN NEWS COMPANY, No. 121 NASSAU STREET.

—
1865.



S P E E C H .



SUBJECT: Neither legal nor moral right to try the rebels for treason. The way to a sure and enduring Peace lies not through perfidy and vengeance, but through justice and love.

THE South, by plunging the nation into this horrid War, committed the *great* crime of the age. The North, under the persistent urgency of press and pulpit to punish the South for treason, is in danger of committing the *mean* crime of the age. Lips and pen so uninfluential as mine, can do but little to avert it. What, however, they can do to this end they must do. And, then, if this mean crime shall be committed, I shall, at least, have the consolation of knowing that I am free from all responsibility for it. Moreover, the little that I and the much that you can do to avert this danger must be done quickly—for the work of trying prisoners of war for treason is already begun.

All over the North there is clamor for the blood of the leading rebels, whom we have captured, and whom we may yet capture. For one, I have no sympathy with this clamor. When the South finally and fully submits, let that be the end of all bloodshed, and indeed of all punishment. In saying this I, of course, have no reference to the assassination of our beloved President, nor to the starvation and murder of prisoners. Let all merited punishment fall upon those, who are guilty of these infamous and infernal crimes. The law of war affords them no protection.

My position is simply, that there shall be no punishment of the South for the Rebellion—or, to use another word, no punishment of her for treason. I say this, not because she has

already suffered quite enough—not because her property and people are wasted, and she has become little better than one desolation. I say it, not because the safety of the North calls for no more suffering of the South, and that no valuable interest at the North can be made more secure by the further suffering of the South. I say it, not because the South has not been guilty of treason—for she has been. But I say that the South should not be punished for treason, because we agreed that she should not be. We came, in effect, into this agreement by consenting, reluctantly it is true, to have our War with her conducted according to the law of war—by which I mean the law of international war. That we consented to have our war so conducted is indisputable. We followed other nations, and recognized in the South the rights of a belligerent. The Supreme Court of the United States were unanimous in recognizing them. We entered upon, and continued in, an exchange of prisoners with her. Innumerable have been our truces with her: and, formally as well as informally, we have negotiated with her for Peace. On one occasion we recognized her *de facto* nationality, and its outgrowing rights and dignity, by making even the President of the United States and the Secretary of State our Commissioners of Peace. Nor did they stand back to have hers come to them, humbly and suingly. On the contrary, our Commissioners honored hers by going more than half-way to meet them. All this, and other things, including especially our blockade of the Southern ports, prove, beyond controversy, that we consented to conduct the War according to the law of war—for it is only under the law of war that these things can be. But our agreement thus to conduct the war was our waiver of all right, our surrender of all claim, to punish the South for treason—was, indeed, our virtual agreement not to punish her for it. This is so from the simple fact, that, under the law of war, there is no treason. I might rest here—for already I have proved my case. Already I have proved that we agreed to bring the War under the law of war: and whether it was proper or improper in us to do so, the agreement nevertheless must stand. I will, however, proceed to show that it was proper to do so.

Vattel says: “But when a nation becomes divided into two parties abso-

lutely independent, and no longer acknowledging a common superior, the state is dissolved, and the war between the two stands on the same ground, in every respect, as a public war between two different nations. They decide their quarrel by arms, as two different nations would do. The obligation to observe the common laws of war toward each other is therefore absolute—indispensably binding on both parties, and the same which the law of nature imposes on all nations in transactions between state and state.”

Now, this is precisely our case—as precisely so as if Vattel had had us, and only us, in his eye. The Southern half of our nation broke away from the Northern half, and became a nation *de facto*, with all the machinery of a national government: and, like the Northern half, it acknowledged its own authority, and no other. The War therefore was to be governed by the same rules, that would govern a war between Mexico and America.

But it may be said that Vattel wrote a century ago. The more shame then if, in this age of greater light, we cannot rise high enough to respond to the wisdom and liberality of teachings accepted in an age of comparative darkness! Policies far wiser and far more liberal than any inculcated by Vattel we should be ready to embrace.

But if, according to Vattel, our War comes under the law of war, how much more does it according to Hallam, the unsurpassed publicist of our day! For he holds that the civil war of the seventeenth century, resulting in the execution of Charles the First, should have been conducted by international law. But how immeasurably less like different nations were the two parties in that War than are the two parties in ours! Hallam says:

“If his (Charles's) adherents did not form as, I think they did not, the majority of the people, they were at least more numerous, beyond comparison, than those who demanded or approved of his death. The steady, deliberate perseverance of so considerable a body in any cause takes away the right of punishment from the conquerors, beyond what their own safety or reasonable indemnification may require. The vanquished are to be judged by the rules of national, not of municipal law.”

And how emphatically does Macaulay, another of the largest minds of our age, indorse these words of Hallam! Says Macaulay:

“Mr. Hallam decidedly condemns the execution of Charles; and in all that he says on that subject we heartily agree. We fully concur with him in thinking that a great social schism, such as the civil war, is not to be confounded with an ordinary treason; and that the vanquished ought to be treated according to the rules, not of municipal, but of international law. In this case the distinction is of the less importance, because both international and municipal law were in favor of Charles.

“He was a prisoner of war by the former, a king by the latter. By neither was he a traitor. If he had been successful, and had put his leading opponents to death, he would have deserved severe censure; and this without reference to the justice or injustice of his cause.”

And then how justly and grandly does Macaulay close in this connection by saying:

“Firmness is a great virtue in public affairs, but it has its proper sphere. Conspiracies and insurrections in which small minorities are engaged, the outbreaks of popular violence unconnected with any extensive project, or any durable principle, are best repressed by vigor and decision. To shrink from them is to make them formidable. But no wise ruler will confound the pervading taint with the slight local irritation. No wise ruler will treat the deeply-seated discontents of a great party as he treats the conduct of a mob which destroys mills and power-looms. The neglect of this distinction has been fatal even to governments strong in the power of the sword. The present time is indeed a time of peace and order. But it is at such a time that fools are most thoughtless, and wise men most thoughtful. That the discontents which have agitated the country during the late and the present reign, and which, though not always noisy, are never wholly dormant, will again break forth with aggravated symptoms, is almost as certain as that the tides and seasons will follow their appointed course. But in all movements of the human mind which tend to great revolutions, there is a crisis at which moderate concession may amend, conciliate, and preserve. Happy will it be for England, if at that crisis her interests be confided to men for whom history has not recorded the long series of human crimes and follies in vain.”

I proceed to quote another authority to show that it was proper to have this War carried on by the law of war. It is Welcker, a noble patriot and an eminent German publicist. He says:

“His (the leader’s) followers are also more or less punishable, as aiders and abettors, as long as their number has not grown so large that a sincere belief exists that he or they act with the consent of the nation, or that a division of the nation has taken place into two hostile camps. In the latter case the rebellion becomes civil war: the right has become doubtful, and is left, as in the wars between several states, to the decision of an

almighty judgment [*Gottesgericht.*] Under such a presumption every citizen is bound to declare himself for one or the other party (,according to the wise law of Solon he is bound to do it—to go either right or left;) and then neither blame nor punishment can reach him, whatever the result of the battle may be. Then there are only Victors and Vanquished—not Loyalists and Criminals. And, although it is difficult to state the precise moment when Rebellion ceases, and Civil War commences, there nevertheless exists an essential difference between them: and, when the moment has arrived, it is then for the victorious party to extend clemency, and even no punishment all—for prudence and humanity would dictate such a course.”

The only other authority I will cite to this end is the New American Cyclopaedia. The article in it entitled “Treason,” said, I know not how truly, to have been written by our distinguished fellow-citizen, Dr. Lieber, shows the current and the conclusion of the authorities on this subject in the following few words:

“No one incurs the guilt of treason by adherence to a King or Government *de facto*, although that King or Government has but the right of a successful rebel, and loses all by a subsequent defeat.”

Now, with all deference for the authorities I have cited, I nevertheless think it well to justify their conclusion, that a civil war comes under the law of war, by adding a few reasons to those contained in the citations.

1st. Where a nation breaks into two parts, and each a considerable one, the belligerents on each side are too numerous to be treated as traitors, or as any thing else than enemies in war. Says Edmund Burke: “I do not know the method of drawing up an indictment against a whole people.” Nor would the objection to treating them as other than enemies in war be removed by the victors punishing but a small proportion, and pardoning the remainder. To be pardoned for a great crime, as for instance treason or piracy, is the next thing to being punished for it. And, where great masses fall under the stigma of such a pardon, sad must be the effect not only upon themselves, but in some degree upon all mankind. It is a blot on the human family. It is a disgrace to human nature. For one, I am not willing to have it go over the earth, and down to posterity, that millions of my countrymen were pardoned traitors.

2d. It is not only charitable but just to presume that, where

vast numbers take a very momentous and responsible step, they sincerely and deeply believe that they have ground for it. Moreover, it is proper to believe that they have some strongly apparent, if not indeed some real, ground for taking it.

3d. A very large class of men, who are free to embark in a war subject to the liberal and humane provisions of the law of war, and whose part in it would go to soften its rigors and control its excesses, and hasten its termination, would nevertheless refuse to have any part in one, which is a merely savage strife. In all probability we should have lost our cause and country, had our Government persisted in refusing to let this war be conducted by the law of war. The majority of our Northern people are too civilized to go into a "black flag" and "no quarter" war. But another reason why the South would be like to triumph in such a war, is, that such a war would fall in with the habits of her half-civilized masses.

4th. The only other reason I will give why a civil war, and especially one of the wide dimensions of our own, should be under the law of war, is that, in the course of it, there has been, particularly to the defeated party, quite suffering enough without adding to it punishment for treason. In the closing of every such war, the voice of compassion exclaims: "Shall the sword devour forever?" "Put up thy sword!" In the closing of every such war, God says to the destroying angel, as of old He said to him on behalf of the decimated and trembling Jews: "It is enough: stay now thine hand!"

But it is held in some quarters that, although the intermediate stages of a civil war are under the law of war, its incipient and terminating stages are not. Groundless distinction! How utterly groundless we see it to be in the case of our own War! For was it not in the light of its incipient stages, that belligerent rights were accorded by us? Surely it was from what it had actually been that the parties to it agreed to conduct it by the law of war. The exchanging of prisoners, that was agreed on, was a principle which was to operate backward as well as forward. No longer had either party the right to harm prisoners that were taken in the first year, or first month, or first week of the hostilities.

So much in respect to the incipient stages of our War. And now for a few words in respect to its terminating stages. Why

should not these also be under the law of war? Is it because of the hint in our Order Number One Hundred, in the year 1863, that we should hold the finally vanquished to be guilty of treason? But that hint was quite unworthy of a Government of good faith and good manners. Do the Proclamations of Amnesty show that these stages of the war do not fall under the law of war? But, in point of fact, such Proclamations are out of place in civil, as well as international, wars. In the case of a mere rebellion or insurrection, there is room for the exercise of the pardoning power. But in a civil war it is an unwarrantable and offensive assumption. Moreover, this Order Number One Hundred, and these Proclamations, are but *ex-parte* papers, and therefore can not repeal, or, in any wise or in any degree, modify the understanding between the belligerents to conduct the war according to the law of war. Least of all, could they do so whilst the belligerents were continuing to act upon that understanding, and neither party had given notice of discontinuance to the other. We must remember that it takes two to break as well as two to make a bargain.

The plea, so current, that, having reached the end of the War, we may now take prisoners, and try them under the Constitution, is altogether invalid. We have not yet reached the end of the War. For, when we have reached it, we shall have no prisoners to try, unless it be those guilty of crimes against the law of war—such as assassins and the fiends who are guilty of starving and murdering prisoners. I say, we shall have none to try;—for, in the case of an international or a civil war, Peace implies the surrender of the prisoners on both sides: and for either party to persist in retaining prisoners is to persist in continuing the war. Let me here repeat what I have already substantially said—that it is only the prisoners in a mere insurrection, or a mere rebellion, who can be tried. The South, in her vast uprising, reached the dignity and rights of a party to a civil war—though, from the force of habit, and for the sake of convenience, we all continue to call her war upon us, its later as well as its earlier stages, a rebellion. The disturbance in Ireland, some sixteen or seventeen years ago, not amounting to a civil war, the British Government had the right, so far as the law was concerned, to try the prisoners for treason. But had a considerable part of the people of the British Islands

risen up against the remainder—say one half or one third, or even one fourth—it would have been a civil war, and the prisoners in it would have been entitled to all the protection provided by the law of war. That they would have obtained such protection, had the Government party been the victor, may be confidently inferred from the fact that, in the case of the Irish Rebellion referred to, the Government, in its remarkably generous and honorable response to the claims of progressive civilization, punished but seven of the offenders, and no one of them with death.

But, surely, it is not for Freedom-loving America to take the ground, that a civil war should end in the right of the victor to hold the finally vanquished amenable to the law of treason! Surely, she would not have had her Washington and Franklin and their noble associates held amenable to it, had the American Revolution failed! There will, probably, be many more civil wars, the earth over: and the vast majority of them will originate in the interests of Freedom. Is it then for Freedom-loving America to set the precedent, or even to follow the precedent, of having civil wars end in the victor's punishing the vanquished? When crowned heads shall, hereafter, succeed, as doubtless oftentimes they will, in putting down the parties for Freedom in such wars, shall they have the example of America to plead for hanging the leaders of these parties? God forbid! Hungary and Venice may again arm themselves to assert their right to independence; and may again be unsuccessful. Shall Austria, in that event, find, in the example of America, her most efficient argument and most widely accepted justification for a bloody policy toward the vanquished? If, too, oppressed Ireland (—I call her oppressed, not because I fall in with all the popular clamor against England concerning her relations to Ireland—I call every people oppressed who are *compelled* to support a religion, be it even their own—and I call that people cruelly and wickedly oppressed, who are *compelled* to support a religion other than their own—) if, I say, oppressed Ireland shall rise up against the British Government with as great unanimity as that with which the South rose up against us, and shall fail—shall that Government be able to find, in the policy of our own, a stronger incitement than in any other example to punish the vanquished?

But it will be said, that the reason why Washington and Franklin should not, in the event of their failure, have been punished, is that their cause was just: and that the reason why Davis and Lee should be, is that their cause is unjust. Vain, however, to save the interests of Freedom and Justice would be this distinction! For the conquering party would have but to hold that his is the just and the other the unjust cause (—and for this he would require no stronger proof than his own word—) and then he could go straight to hanging the conquered.

Let it be understood that civil war is, in its last stages, to pass from under the law of war and to come under the penalties of a local constitution or municipal law; and the law of war will no longer be allowed to govern any of the stages of civil war. Every civil war will then, from the outset, be an internecine strife: will then, from the outset, unfurl the black flag and give no quarter. One thing more in this connection. Despots will then feel themselves to be far more firmly seated, when they shall see the friends of Freedom discouraged by the fact, that no other kind of war is left open to them than that which is too horrid to be embarked in. Is it for you, America, to contribute to this change? Is it for you, who should be the most steadfast and efficient friend of Freedom the earth over, to be her great betrayer the earth over? Is it for you to strengthen the hands of despots, and to identify yourself with their policies? O my country! you see not the deep and world-wide injury, nor your own unfading infamy, that will come of your letting the vanquished in this war be punished! If you did, in vain would be all the counsels of vengeance and perfidy. If you did, in vain would be the efforts of priests and politicians to flatter the President and fire the people at this point.

Some say that the party, which brings on a civil war against a Republican Government is, when finally defeated, not entitled to the humanities of the law of war. This they say, because they hold that the right of Revolution, although recognized and honored by them under a Monarchy or Despotism, has no existence in a Republic — especially in one where suffrage is as general as in ours. Fallacious distinction! For in a Republic, as well as elsewhere, there may be oppressions unendurable and obstinate and successfully defying every remedy short of Revolution. How offensive then the doctrine, that

the great and sacred right of Revolution, accorded to every other people, is denied to the dwellers in a Republic!

I need say no more to justify the position that our war—every part of it from beginning to end—comes under the law of war. Why then does our Government propose to bring its terminations under the Constitution? Is it because it has the power to do so? Is it because might begets right? Sure I am that our upright Government, with that brave and strong and noble patriot Andrew Johnson at its head, is not consciously under such unworthy sway. Sure I am that it is not conscious of proposing a breach of faith. Nevertheless, sure also am I that there could hardly be a more gross, glaring and guilty breach of faith, one more disastrous to us and to all mankind, than to fling aside the law by which we agreed to conduct the War, and to thrust in the place of it a law by which a vindictive and bloody spirit against a fallen foe can be gratified. Men say that it is not to gratify such a spirit, but to serve the cause of justice. But if they are not blind to themselves and to the workings of their own hearts, they nevertheless are stone-blind to the fact that the cause of justice cannot be served by injustice. In order to save life and property from an exterminating, piratical war, and in order to secure the military services of the scores of thousands, who would have shrunk from taking part in such a war, and in order, I may add, to save our country (it thereby was saved,) we bargained to conduct the war according to the law of war. But, now, when we have reaped the advantages of the bargain until we are strong enough to do without it, it is proposed that we shall break it! Said I wrong then at the beginning of my speech, that if the South has committed the *great* crime of the age, nevertheless the crime, which the North is urged to commit, would be the *mean* crime of the age? Think you that, had we apprised the South that, in the day of our decisive successes, we would unfurl the “black flag” and make “death to the captive” our motto—think you that, in such case, she would not have instantly unfurled it, and refused to take prisoners?

I gave, as one of the reasons for conforming a civil war to the law of war, the probability that there must be not only a strong sense of right, but also a very plausible show of right to move such vast numbers. Emphatically so was it in the

case of our war. Emphatically so, not only on the loyal but also on the disloyal side. The many millions, who seceded from the Union, not only fully believed in the doctrine of State Sovereignty, but they had really a large measure of right to believe in it—not because the doctrine is sound—for in my judgment it is utterly unsound—though modesty and justice require me to confess that many men, both wiser and better than I, believe it to be entirely sound. I hold that they had this large measure of right to believe in the doctrine, because of the high authority for it and of the wide prevalence of it.

Scarcely was our nation organized under the Constitution, ere she became divided into two political parties—the Republican and the Federal. Eminent leaders in the Republican Party, even its preëminent leaders—instance Jefferson and Madison—began early to teach that the Constitution favors the doctrine of State Sovereignty. That Party was everywhere, North as well as South, more or less leavened with it. At the South the doctrine came to be generally received. It is true, that the attempt of South-Carolina, in the year 1833, to reduce it to practice, did not meet with extensive favor anywhere outside of South-Carolina. It was indorsed by the National Democratic Convention of the year 1852. Nevertheless, in the judgment of most who held it, a fit occasion for practically asserting it had not yet arisen. But, in the first election of Mr. Lincoln to the Presidency, the South saw such an occasion—an occasion for practically asserting the doctrine of State Sovereignty by seceding from the Union. Hundreds of thousands at the North sympathized with her spirit—though it is but justice to them to say that the great majority of them would have preferred that the South withhold herself from violence, and from extreme measures for redressing her alleged wrongs. It is not too much to say, that this War developed the Democratic Party into a State-Sovereignty Party. Amongst the many evidences of its having become such a Party is its having nominated last year for the Vice-Presidency an open as well as an able and upright advocate of the doctrine of State Sovereignty.

Now, in the light of such facts as these, is it not reasonable to admit, that the seceders had some ground for believing in the doctrine of State Sovereignty? Nay, in the light of such facts,

would it be far too much to say that, until now, State Sovereignty has been an open question with the American people? But let us thank God, that it is no longer an open question with them. It is now decided, abundantly and forever—both at the ballot-box and on the battle-field—that the doctrine of State Sovereignty, together with secession and all its other offspring, must be given up. So much treasure and blood has this doctrine now cost the American people, that they will never more have patience with any, who shall continue to advocate it. But though the doctrine is not to be borne with in the future, nevertheless may not the hitherto wide-spread belief in it amongst both statesmen and people, North and South, be allowed to mitigate and excuse, in some small degree, the great crime of which the South was guilty in allowing her belief in this doctrine to bring this heart-breaking and desolating war upon the land?

I do, indeed, blame the Davises and Lees and Breckinridges for choosing Patrick Henry, Jefferson, Madison and Calhoun, instead of Washington, Hamilton, Jay and Webster for their teachers at this point. Nevertheless, I am reasonable enough to pity as well as blame them. "Considering thyself, lest thou also be tempted." In their circumstances, you and I would, in all probability, have been tempted to do as they did. In all probability, we would have come under the teachings and influences, which they came under.

How beautiful and perfect the religion taught by Jesus Christ! I have often thought, that its beauty and perfectness consist in nothing so much as in the fact, that it has but one rule of conduct, and this rule so simple as to be intelligible to all—to the young and the old, the wise and the unwise, the learned and the unlearned. Oh! had we but the heart to apply to the case in hand this rule of doing as we would be done by, how quickly should we pass kind and generous judgments on the men, who have been so evilly and so sadly misled by these great names, whose worshipers in the North are so little less numerous than in the South!

I have not spoken these words of kindness in behalf of our subdued enemies to turn off your eyes from their treason, provided they are justly liable to prosecution for treason. Bear in mind, that I did not refer to this wide-spread belief in the right of Secession for the purpose of furnishing an excuse for treason,

but only to furnish a reason for bringing and continuing this War under the humane and merciful code of war. Nevertheless, I must say that, in the light of their sincere and, so far as great names could make it such, *authorized* belief in the right of Secession, we ought, with reluctance rather than with alacrity, to enter upon this prosecution for treason, even if it be clear that there is treason in the case. One thing more, however, do I say—and it is that this belief in the right of Secession greatly aggravates the meanness and wickedness of the absurd attempt to hold men guilty of treason under the law of war. Surely, surely, it does not become the North, where also the doctrine of State Sovereignty has prevailed so widely, to be eager to punish those who have been led by the doctrine into criminal deeds.

One thing more in this connection. As it was the pro-slavery spirit which prompted the South to avail herself of what she deemed to be her constitutional right of Secession, and as the North is but little if any less responsible than the South for this spirit, so here is another reason why the North should be more reluctant than eager to punish her for Secession. Then, too, there is the crime of starving and murdering prisoners—a crime that our Government must not fail to punish. For *that* also the North has a share of responsibility, since *that* also came from the pro-slavery spirit. Yes, from this spirit came the monstrous crime which finds no precedent and no countenance in modern Christendom—from this spirit, which, denying all rights to the black race, can easily deny whosoever rights stand in its way. I have already substantially said, that the North is scarcely less responsible than the South for the generation and growth of this infernal spirit. The North has sought as earnestly as the South to serve herself of Slavery. She as well as the South has ever maintained that the nation is bound by her organic law to uphold slavery. Politically, ecclesiastically, commercially, socially, she has upheld slavery. For the North then to complain (and this she cannot do too deeply or too constantly,) of this starving and murdering of prisoners, is to complain of what, to no small extent, she is herself responsible for. And so, too, by the way, it is of what is in part her own work that she complains when she complains of the Rebellion—the Rebellion itself having been prompted by the pro-slavery spirit, and the North and the South having a common responsibility for that spirit. The crimes of slavery

in this land are the crimes of the North as well as of the South. Therefore, for the North to affect horror at these crimes, and to hasten to punish them, as if she were entirely innocent of them, is a piece of hypocrisy well illustrated by that of the adulteress, who "eateth, and wipeth her mouth, and saith I have done no wickedness." The one duty of the North, which just now is above any and all her other duties, is to humble herself by the side of the South in a common repentance for common sins. But if she goes to punishing the South for the Rebellion, she will lose all inclination to this duty—ay, and all sense of it. The most effectual of all ways for making ourselves feel morally whole, and for attaining to the greatest heights of self-complacency, is to fall upon others for the sins of which we are ourselves guilty.

And still one thing more in this connection. Whence came the assassination of our beloved President?—that crime for which we all demand the severest punishment? The people of the South did not call for it. At the time it took place, they would have voted, well-nigh unanimously, to retain him in the Presidency. For they knew that no man in all the North was disposed to deal more kindly by them than was this man, whose heart was all kindness. Even for this preëminently shocking crime also the North is bound to feel and acknowledge her share of responsibility. For it was the pro-slavery spirit, that impelled the assassin—a spirit, which dwells in Northern as well as in Southern breasts, and which is no less intense in the one than in the other. Say what we will to the contrary, and be as indignant at the imputation as we please, Booth was the product of the North as well as of the South. He was moulded as well by Northern as by Southern pulpits, presses, and usages. We may depend upon it that there is no worse type of pro-slavery at the South than that which, less than two years ago, slew, and hung and burnt negroes in this city. Pro-slavery is quite as murderous at the North as at the South. Wherever it is, it is the worst spirit that Satan ever let loose upon the earth. Wherever it comes in contact with the aristocratic spirit, it kindles up that spirit into sympathy with itself, and into likeness to itself. Aristocracy is set on fire of Pro-Slavery, and Pro-Slavery is set on fire of Hell.

But I may be asked, whether I would have no punishment

inflicted upon our conquered enemies? I answer, none whatever. The punishment of these our brothers is already great enough—yes, and far too great. I call them our brothers—for such they still are. God forgive us, if we hated them when they were our rampant foe. But how can He forgive us if we do not love them now, when they are our fallen foe? Who doubts that, were we animated by the Christ-spirit, we should put around them the arms of a pitying and forgiving love? But reason enough why we should not punish them is, that this War sprung, as, in effect, I have already said, from their and our common political fallacies, and from their and our common crimes against down-trodden humanity. Oh no! our work is to repent rather than to punish.

But in the reconstruction of the rebel States (—by the way, I observe that Attorney-General Speed does not like the word reconstruction in this connection: though he will like it as soon as he adopts the true theory in the settlement of our national difficulties—) but in this reconstruction, would I require no changes in their laws, systems and usages? I answer, none whatever in the way of punishment, and none whatever in the way of indemnity for the past. Our being her fellow-criminal is sufficient to cut us off both from punishing her and from indemnifying ourselves. All we are entitled to is security for the future. If I sit down to a drinking bout with my neighbor, and if before we are through, I get a black eye, it is not for me to prosecute him for assault and battery. My only legitimate concern in the case is to be safe in the future—in other words, to keep myself ever after, and him too, if I can, at a safe distance from rum. But almost from the beginning of our national existence, the North and the South have been drinking together. The blood of the black man has been their beverage. Under the maddening draught they **have** wronged each other, and perhaps not far from equally; and therefore neither should now object to letting bygones be bygones. Only let both see to it that, in the future, both keep clear of slavery and all its concomitant wrongs.

In very rare instances punishment may be proper under the law of war. Vattel says, that “the conqueror may, according to the exigency of the case, subject the nation to punishment by way of example.” Frequent are the instances in which the

conqueror may seek indemnity. Says Vattel: "He undoubtedly may do himself justice respecting the object which had given rise to the war, and indemnify himself for the expenses and damages he has sustained by it." And, according to the same author (and only what I will now quote meets our case,) "he may even, if prudence so require, render the enemy incapable of doing mischief with the same ease in future." It was, perhaps, quite unnecessary to produce an authority for what is so certain as the right of the conqueror to insist that the conquered shall be controlled at points where he would otherwise be like to repeat his mischief. Having this right, how reasonable is it for us, the conqueror in this War, to require—

1st. That there shall be no more slavery in the rebel States.

2d. That none of their inhabitants shall ever again lose or gain civil or political rights by reason of their race or origin.

3d. That their large landed estates shall be broken up—not for the benefit of Northern people, but to be parceled out solely to the Southern poor. Our soldiers can not be overpaid; but we are able to pay them without taking, to this end, any of the lands, which belong to the Southern people.

4th. That all debts incurred in aid of the rebellion shall be repudiated.

5th. That the loyal, and only the loyal, of the rebel States shall be allowed access to the ballot-box.

Slavery is chargeable with this war. But all these requirements are necessary to prevent its virtual, if not, indeed, its literal reestablishment. In no one of these is any punishment or any indemnity exacted. To leave the soil and the ballot in the hands of the slaveholders, and neither in the hands of the slaves, would be to leave them in such relations to each other, as could not fail to beget oppressions closely resembling, if not indeed identical with, those of slavery. From these oppressions might come the worst of wars—a war of races. For the black millions of the South, made by this war immeasurably more conscious of their rights and of their power to assert them, will not be hereafter the patient beings they have hitherto been. Moreover, from the haughty spirit and intolerable demands of the oppressors might soon proceed another war of the South with the North.

How blind are the men, who deny that the black man shall vote! They must be born again. In their new birth, and in nothing short of it, will they get rid of their caste-spirit and their contempt of races. When rid of these depravities, they will see, not only that there is no folly so great and no ingratitude so base, as is this taking from our black saviours the muskets with which they have saved the nation, and at the same time, withholding from them the ballot with which to save themselves; but they will also see that negro suffrage is indispensable to save the white loyalists of the South, ay, and to save the South.

Although I would have disfranchisement for life to be the sentence in the case of the disloyal leaders, and for not less than ten or a dozen years in the case of the disloyal masses, I, nevertheless, would have the disfranchisement cease as soon as compatible with the public safety: and this, by the way, would be very soon, were the black man allowed the ballot and the soil. For then, not only the power of the disloyal to work evil would be neutralized, but their disposition to work it would die out with their power to work it. Oh! that the Southern whites were wise! How quickly and gladly then would they let the black man vote! Present appearances to the contrary notwithstanding, never will the ballot be secure in their own hands until the black man is allowed to vote. Never until then will there be Peace at the South. Never until then will the black man be contented. Nay, never until then will his vengeance cease to burn.

In speaking of the exclusive right of the loyal to the ballot, I did not include amongst them those who purge themselves of disloyalty by listening to a few words and kissing a book. No such farcical ceremony as that should be allowed the power to transmute an enemy into a friend.

*This required repudiation of the Confederate debt may be construed into a measure of indemnity—but not properly. In this requirement, we do not make the South pay our expenses in the war. But she still is, as she ever has been, a part of our nation; and, as such, she must bear her fair share of taxation to uphold this nation. Hence we cannot consent to take a second mortgage on her, or even a joint mortgage with any of her creditors. We must have as free access to her taxable property and to her

sources of revenue as to those of the North. Were she to be loaded down with the Confederate debt, she would be a pauper upon our hands, rather than a helper in paying our national expenses.

It will be said, that many of the proud men of the South would banish themselves from the country rather than remain in such circumstances as these which we propose. But if such circumstances are indispensable to the public safety—and how can reasonable men deny that they are?—then, surely, they alone would be responsible for flying from them, instead of falling in with them. They should harmonize themselves with their new and necessary circumstances, instead of complaining that they are wronged and punished by them.

The question is often put—Whether we would like to have the North come under restrictions similar to these we would impose upon the South? But the question is too foolish to need answering. In the first place, such restrictions are certainly not of such vital necessity at the North as they are at the South. In the second place, as the North has not rebelled, and has not been conquered, the Government has no power to impose them on her.

I do not forget that very many hold, that it is for each rebel State to pass for herself upon these points, which I make indispensable in her reconstruction. They hold that the rebel State is not out of the Union, and that it has never been out of it. So do I. But I also hold that she has broken her proper relations to the Union, and has broken them so entirely, as thereby to have forfeited every constitutional right. Moreover, I hold that we, her conqueror, will have the clear right, when she renews her relations to it, to see to it that, in these relations, is nothing of fearful peril, either to herself or to the Union. For one, I can not admit that the rebel States have been under that Constitution during this war. To admit it would be to admit that they may be punished for treason. They have been, and still are, under a higher law—the law of war. During this war, the North and the South have stood to each other under the law of war, and under that only. As when in a war with England or Mexico, our relations to each other are solely under the law of war, so when the Northern half of our nation is at war with the Southern half, our relations to each other are sole-

ly under the same law. When we shall have reached Peace—and that cannot be until the terms of Peace are agreed on, and punishment is over, and the prisoners on both sides surrendered—then, and not until then, will the South be again under the Constitution.

It may be thought, from my denying that the rebel States are under the Constitution, that I deny the President's right to set up a Government in North-Carolina. No, I do not. He may, if the necessities of war call for them, set up Governments in all the rebel States. They can, however, be none other than Military or Provisional Governments, which, with all their machinery—though it include even Conventions, Constitutions, and Legislatures—must pass away as soon as Peace shall be restored. For when Peace has come, the law of war, under which alone he can set up Governments, has passed away, and his Governments have, of course, passed away with it. I admit that there are some things done under the law of war, which endure when that law has ceased. The freeing of slaves under a law-of-war Proclamation is an instance.

Just here I might be asked whether a President of the United States is competent to the final making of terms of Peace. Very certainly he is, in the case of a revolt or rebellion:—and as certainly he is not, in the case of an international or a civil war. But for the sudden collapse of the Confederacy, President Johnson would have, as President Lincoln had, a Confederate Government with which to negotiate a Treaty of Peace. That Treaty, ratified by our Senate, and by the proper authority on the other side, would end the war. As, however, things now are, I see no way of reaching Peace but through the action of Congress, whose war-power is absolute. Congress can say on what terms the war shall cease—in other words, in what condition the rebel States must put themselves—what restrictions and disabilities they must come under—ere the law of war shall cease, and ere the Constitution, now held in abeyance by the paramount law of war, shall resume its sway over those States. But the question of these restrictions and disabilities must be settled before Peace is admitted to have come—for, after that, it will be too late, since, after that, the Constitution, under which all the States are equal, will again obtain over the whole South as well as over the whole North.

But, although all the States under the Constitution are, *under it*, equal to each other, nevertheless they may, *outside of it*, be very unequal to each other. To illustrate: Kentucky and Delaware have the acknowledged constitutional right of holding slaves, and of making race or origin the ground of distinction in political and civil rights. So, too, will Georgia and Alabama have this right, when they shall again come under the Constitution, *unless*, in the mean time, the right, so far as they are concerned, shall have been modified or annulled by action under the paramount law of war, be it the action of Congress or a Presidential Proclamation of Freedom, or both.

But, to return from this long digression, what possible good could come from the adoption of this rigorous and bloody policy? I see none. As I have already said, it is not necessary to the public safety. Such provisions for that, as I have suggested, would be ample. No good, but, on the other hand, great evil would come from the adoption of this policy. It would give us a far lower place in the esteem of the civilized world. It would exasperate the South. The scent of martyr-blood would frenzy her. It might be the means of bringing on harassing and wasting guerrilla wars. It would, too, produce a wide and deep disaffection at the North—wider and deeper than that which has existed, and which the last few weeks of President Lincoln's life and the manner of his death had done so much to allay and hasten to its termination. And would not every trial for treason agitate the whole nation, so large a share of whose people believe that we have neither moral nor legal right to put upon trial, under the Constitution, those whom we have recognized as belligerents, and as under the protection of the law of war? And, after all, could a conviction be achieved in any case, where the jury was impartially impanelled, and where the accused was defended by counsel capable of presenting his case in its noonday clearness, and in the invincible strength of its claims?

The newspapers say, that Jefferson Davis is to be tried for treason—and this, too, whilst, as yet, the accusation of murder envelopes him in its black cloud. Surely, our Government is too considerate and too just to put him on trial under such disadvantage. Surely, our Government will dispose of this accusation, either by retracting it or by trying it, before it puts Mr.

- Davis on trial for treason. Perhaps, it is held that, as both treason and assassination are capital offences, it can make no difference to him on which charge he is first tried. But the difference will be infinite. Were he on trial for assassination, very little would the court and jury be like to let his case be prejudiced by the charge of treason against him. They would not think him guilty of assassination, because they suspected or were even certain of his guilt of treason. But, were he on trial for treason, and the charge of assassination still out against him—a charge that, considering its high and commanding source, is well-nigh tantamount to proof—he would stand before the court and jury in a light little less favorable than that of a convicted assassin, and therefore leaving little doubt of his being capable of any crime.

By the way, the assurance that the President will be merciful, is often repeated to reconcile those who are opposed to it to the trial of Mr. Davis for treason. I do, indeed, hope that, if convicted of treason, he will not be executed: and I do, indeed, hope that, if tried for it, he will be acquitted. But too late will it be after his conviction, or after his acquittal, or even after his being put upon trial, to save the honor of our beloved country. The loud lamentations over our perfidious arraignment of him for treason, which, when the vengeful spirit of the hour has subsided, will break forth all over the land, can never avail to redeem us from the infamy of violating the agreement in which the North and the South covenanted to each other the protection of the law of war. In these loud lamentations will join the friends of Freedom in all other countries. But, the earth over, despots will rejoice that, at a point so vital, America has betrayed the cause of Freedom—that, at a point so vital, America has identified herself with the policy of despots.

I glanced at some of the evil consequences of a cruel treatment of our subdued enemy. How happy, on the other hand, would be the consequences of treating him mildly and humanely! Thereby would we gain the respect and gratitude and love of the whole South. Wide would she open her arms to receive the thousands of families which would, in that case, immediately begin to emigrate to her from the North. And, then, the North and the South would, in a very few years, become one in interest and one also in character. Moreover, a reasonable

and humane Peace, following this horrid war, would not only honor us in the sight of the other nations, but it would contribute largely to advance the cause of civilization, and to elevate mankind, the earth over. Such a Peace would make Peace more beautiful than ever, and War uglier than ever.

Abraham Lincoln—the great and good Abraham Lincoln—has passed away! Very few men have lived with aims at once so high and so disinterested. Still fewer who have cherished such aims, have lived to see them so extensively accomplished. None will say that his life was in vain. The only question is—whether it shall turn out that he has died in vain? And how the American people shall answer this question is of infinite moment to themselves, and of no little importance to all mankind. Before Lincoln's death there were appalling divisions in the land. The North and the South were in deadly strife against each other; and the North was at deep and dangerous disagreement with herself. But Lincoln died:—and the American people flowed together in the tears of a common sorrow. Lincoln died:—and his martyr-blood cemented his divided countrymen into one. Alas, however, in this unhappy world of ours, Evil is ever upon the heels of Good! Scarcely had we begun to be conscious that we had become one again, ere a spirit sprung up to disunite us again. It was the spirit of vengeance. It was the mean as well as malignant spirit that can slake its thirst in the blood of a subdued foe. It was that dishonorable and treacherous spirit, which disowns pledges and conventions, and throws off the sense of moral obligation, when tempted to it by the prospect of advantage. Such is the spirit, which thousands are now busy in spreading over the land, and with which they are especially intent to imbue the heart of our new President. Oh! when shall America see Peace, if this spirit shall now gain the ascendancy!

We are honoring Lincoln. We have given him such a funeral as no other man in all the ages ever had. We are already at work to supply, so far as money can supply them, the wants of his bereaved and beloved family, and to gratify, so far as money can do it, their tastes and desires. And we are planning monuments massive and enduring enough to carry down the name of Lincoln to the generations, that shall dwell upon the earth more than a thousand years hence. But it is in none

of these ways that we can most honor him. To do him the most honor is, to take his leading characteristics of reasonableness, patience, gentleness, love, and forgiveness, and make them, as far as we can, our own. He said to the South: "Go—and sin no more!" And this must we also say to her, if we would honor him. Nay, we shall but mock his memory, if we shall not say it. As Jesus said to his disciples, "If ye love me, keep my commandments," so also does Lincoln say it to his American children. And what are Lincoln's commandments? Love and forgiveness. We all know that, had he lived, his Peace Policy would have been one bringing no harm to a hair of the head of any of our conquered enemies. Let a Peace Policy of that spirit be now adopted, and it will not only bless and save our country, and shed blessed and saving influences over all the earth and into the bosom of all mankind, but it will do more to honor Abraham Lincoln than can possibly be done by provisions for his family, by funeral pageants, and by piles of monumental marble.





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